

No. 15106

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United States  
Court of Appeals  
for the Ninth Circuit

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RICAREDO BERNABE DELA CENA,  
Appellant,  
vs.

UNITED STATES OF AMERICA,  
Appellee.

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Transcript of Record

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Appeal from the United States District Court  
for the District of Hawaii

FILED

JUN -8 1956

PAUL P. O'BRIEN, CLERK



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Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For the Petitioner:

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Honolulu, T. H.

For the Government:

LOUIS B. BLISSARD, ESQ.,

United States Attorney,

CHARLES B. DWIGHT, III,

Asst. U. S. Attorney,

Federal Building,

Honolulu, Hawaii





Original

United States Department of Justice  
Immigration and Naturalization Service

No. 17365-M

PETITION FOR NATURALIZATION

(Under act of June 30, 1953, P. L. 86, 83d Congress,  
by a member or former member of the Armed  
Forces)

To the Honorable the Judge, U. S. District Court of  
District of Hawaii at Honolulu, T. H.:

This petition for naturalization, hereby made and  
filed, respectfully shows:

(1) My full true and correct name is Ricaredo  
Bernabe Dela Cena (No-fee P.L. 86).

(2) My present place of residence is Barber's  
Pt., Oahu, T. H.

(3) I was born on Feb. 1, 1925 in Mambusao,  
Capiz, Rep. Phil.

(4) My personal description is as follows: Sex  
male, complexion dark, color of eyes brown, color of  
hair black, height 5 feet 2¼ inches, weight 133  
pounds, visible distinctive marks mole, right side of  
neck; country of which I am a citizen, subject, or  
national Rep. Phil.

(5) I am not married.

(6) I have no children.

(7) I was lawfully admitted to the United States

at San Francisco, Calif., under the name of Ricaredo Bernabe Dela Cena on April 1, 1954 on the Gen. M. Patrick.

(8) I actively served honorably in U. S. Army under Service No. 10312086 from Mar. 5, 1946, to Feb. 11, 1949, and the U. S. Navy under Service No. 4679261 from Mar. 8, 1954 to present.

(9) I desire to have my name changed to Rick Delacena.

(10) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen.

(11) It is my intention to reside permanently in the United States.

(12) I am not and have not been for a period of at least 10 years immediately preceding the date of this petition a member of or affiliated with any organization proscribed by the Immigration and Nationality Act or any section, subsidiary, branch affiliate, or subdivision thereof nor have I during such period engaged in or performed any of the acts or activities prohibited by that Act.

(13) I am able to read, write, and speak the English language (unless exempted therefrom).

(14) I am, and have been during all the periods required by law, a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order

and happiness of the United States. I am willing, if required by law, to bear arms on behalf of the United States, or to perform noncombatant service in the Armed Forces of the United States, or to perform work of national importance under civilian direction (unless exempted therefrom).

(15) Attached hereto and made a part of this, my petition for naturalization, are the affidavits of at least two verifying witnesses required by law.

I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, that the same are true to the best of my knowledge and belief, and that this petition is signed by me with my full, true name: So Help Me God.

Alien Registration No. 8961320.

/s/ RICAREDO BERNABE DELA CENA

#### Certificate of Examination

I Certify that the petitioner and witnesses named herein appeared before me and were examined by me prior to the filing of this petition.

/s/ STEPHEN A. DURISCH,  
U. S. Naturalization Examiner.

No-fee P.L. 86

#### Affidavit of Witnesses

The following witnesses, each being severally, duly, and respectively sworn, depose and say:

My name is Robert L. Colbert DK/1.

I reside at Barber's Pt., Oahu, T. H.

My name is John G. Bates, DK/2.

I reside at Barber's Pt., Oahu, T. H.

I personally know the petitioner named in this petition for naturalization, of which this affidavit is a part, to be a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and that he is now and has been for at least 90 days actively serving honorably in the Armed Forces of the United States.

I do swear (affirm) that the statements of fact I have made in this affidavit of this petition for naturalization subscribed by me are true to the best of my knowledge and belief: So Help Me God.

/s/ ROBERT L. COLBERT

/s/ JOHN G. BATES

Subscribed and sworn to before me by the above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit in the office of the Clerk of said Court at Honolulu, T. H., this 2nd day of September, A. D. 1955.

[Seal]        /s/ E. LANGWITH,  
Deputy Clerk.

\* \* \* \* \*

Petition denied: List No. 1199 (12-22-55).

Original

List No. 1199

Sheet No. 1

NATURALIZATION PETITIONS RECOM-  
MENDED TO BE DENIED

To the Honorable the Judge, United States District  
Court of District of Hawaii, sitting at Hono-  
lulu, Hawaii.

Stephen A. Durisch, duly designated under the  
Immigration and Nationality Act to conduct pre-  
liminary examinations upon petitions for naturaliza-  
tion to the above-named Court and to make findings  
and recommendations thereon, has personally exam-  
ined under oath at a preliminary examination the  
following twenty-two (22) petitioners for natural-  
ization and their required witnesses, has found for  
the reasons stated below, that such petitions should  
not be granted, and therefore recommends that such  
petitions be denied.

No. 1. Petition No.: Transfer #34, Name of  
Petitioner: Filifili Leasau, Reason for Denial:  
Withdrawn by petitioner.

No. 2. Petition No.: Transfer #41, Name of  
Petitioner: Santiago Aguda, Reason for Denial:  
Withdrawn by petitioner.

No. 3. Petition No.: 11364, Name of Petitioner:  
Clemente Caindoy Espere, Reason for Denial: Lack  
of prosecution.

No. 4. Petition No.: 13186, Name of Petitioner:  
Benjamin Cacho Cordero, Reason for Denial: With-  
drawn by petitioner.

No. 5. Petition No.: 14238, Name of Petitioner: Regino Ocasion, Reason for Denial: Lack of prosecution.

No. 6. Petition No.: 14305, Name of Petitioner: Felipe Javier Agustin, Reason for Denial: Lack of prosecution.

No. 7. Petition No.: 14466, Name of Petitioner: Nuuelua Pupu Sepulona, Reason for Denial: Petitioner lacks knowledge and understanding of the fundamentals of the history and form of government of the United States.

No. 10. Petition No.: 15085, Name of Petitioner: Teofilo Manzano, Reason for Denial: Lack of prosecution.

No. 11. Petition No.: 15111, Name of Petitioner: Eugenio Delacruz, Reason for Denial: Withdrawn by petitioner.

No. 12. Petition No.: 15661, Name of Petitioner: Regino Corpuz Ponce, Reason for Denial: Lack of prosecution.

No. 13. Petition No.: 16650, Name of Petitioner: Gerardo Pascua Regidor, Reason for Denial: Failed to establish good moral character during the period required by law.

No. 15. Petition No.: 16756, Name of Petitioner: Vicente Danao Palparan, Reason for Denial: Lack of prosecution.

No. 16. Petition No.: 16760, Name of Petitioner: Marciano Cruz Ulep, Reason for Denial: Withdrawn by petitioner.

No. 17. Petition No.: 16916, Name of Petitioner:



Juan Tabar, Reason for Denial: Withdrawn by petitioner.

No. 18. Petition No.: 16974, Name of Petitioner: Erenio Talang Banac, Reason for Denial: Lack of prosecution.

Respectfully submitted,

/s/ STEPHEN A. DURISCH

Date: December 22, 1955.

List No. 1199

Sheet No. 2

Naturalization Petitions Recommended  
To Be Denied—Continued

In the United States District Court of District of  
Hawaii

No. 1. Petition No.: 17011, Name of Petitioner: Matsukichi Yara, Reason for Denial: Lack of prosecution.

No. 3. Petition No.: 17223, Name of Petitioner: Ambrosio Arinto Rohas, Reason for Denial: Lack of prosecution.

No. 5. Petition No.: 17224, Name of Petitioner: Tomas Padilla Soriano, Reason for Denial: Petitioner is unable to take the oath of allegiance required by section 337 of the Immigration and Nationality Act.

No. 10. Petition No.: 17313, Name of Petitioner: Silvino Uddipa Arce, Reason for Denial: Lack of prosecution.

No. 12. Petition No.: 17365-M, Name of Petitioner: Ricardo Bernabe Dela Cena, Reason for Denial: Not entitled under any statute.

No. 15. Petition No.: 17379-M, Name of Petitioner: Janis Lapsins, Reason for Denial: Lack of prosecution.

No. 17. Petition No.: 17433-M, Name of Petitioner: Perfecto Solano Marino, Reason for Denial: Withdrawn by petitioner.

Second sheet of two sheets of the list dated December 15, 1955, of 22 petitioners for naturalization.

Respectfully submitted:

/s/ STEPHEN A. DURISCH

December 22, 1955.

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(Original)

Order No. 1199

ORDER OF COURT DENYING PETITIONS  
FOR NATURALIZATION

United States of America,  
Territory of Hawaii—ss.

In the United States District Court of District of  
Hawaii at Honolulu, T. H.

Upon consideration of the petitions for naturalization recommended to be denied, listed on List No. 1199 sheets 1 to 2 dated December 22, 1955, presented in open Court this 22d day of December, A. D., 1955, It Is Hereby Ordered that each of the



said petitions, except those petitions listed below, be, and hereby is, denied.

\* \* \* \* \*

It Is Further Ordered that petitions listed below be continued for the reasons stated.

1. Petition No.: 15085, Name of Petitioner: Teofilo Manzano, Cause of Continuance: For further consideration of documents submitted.

3. Petition No.: 16974, Name of Petitioner: Erenio Talan Banac, Cause of Continuance: Has not had 30 days' notice.

4. Petition No.: 17313, Name of Petitioner: Silvino Uddipa Arce, Cause of Continuance: Has not had 30 days' notice.

By the Court, this 22d day of December, 1955.

/s/ J. FRANK McLAUGHLIN,  
Judge.

In the District Court of the United States  
for the District of Hawaii

Petition No. 665-P-17365-M

Petition for naturalization

of

RICAREDO BERNABE DELA CENA

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND RECOMMENDATION OF DES-  
IGNATED NATURALIZATION EXAM-  
INER

To the Honorable, the Judges of the United States  
District Court for the District of Hawaii:

1. The undersigned, duly designated under the Immigration and Nationality Act to conduct preliminary examinations upon petitions for naturalization, respectfully submits that the above-named petitioner, a native and national of the Philippine Republic, age thirty years, who has resided continuously in the United States since his arrival in the United States as an enlisted man in the United States Navy on April 1, 1954 filed the petition for naturalization numbered above on September 2, 1955 under Public Law 86, 83rd Congress, 8 U.S.C. 1440a.

The question presented is whether the petitioner may be naturalized without lawful arrival for permanent residence.

2. On September 2, 1955, following the filing of

the petition for naturalization, the petitioner and his verifying witnesses were accorded a preliminary examination at which they testified under oath. It was established by oral testimony that the petitioner's first arrival in the United States was at San Francisco, California on April 1, 1954 as a seaman in the United States Navy, without immigration inspection. It was further established by testimony and the production of the document itself that the first naturalization application of this petitioner was submitted on October 3, 1954. Also it was established from oral testimony and documents that the petitioner served in the United States Army from March 5, 1946 to February 11, 1949, and that the enlistment and the service were in the Philippine Islands. It was further established that the petitioner enlisted in the United States Navy in the Philippine Islands on March 8, 1954, from which date the petitioner has served in the United States Navy.

3. In order to permit the petitioner to bring his case before the court the petition was filed under the Act of June 30, 1953, Public Law 86, 83rd Congress, 8 U.S.C. 1440a. Nevertheless, it is the desire of the petitioner to have the court consider not only the question whether he is entitled to file a petition under the particular statute alleged, but whether he is entitled to be naturalized under any law.

I will assume that the court will consider all statutes past, and present that might have any application, and I will discuss them all, and ignore the fact that under some statutes considered a fee for filing is to be paid to the Clerk of the Court, and that the

present petition is filed as a no fee Public Law 86 case.

First as to the law under which the petition is filed, 8 U.S.C. 1440a, reads as follows:

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of sections 310(d) and 318 of the Immigration and Nationality Act, any person, not a citizen, who, after June 24, 1950, and not later than July 1, 1955, has actively served or actively serves, honorably, in the Armed Forces of the United States for a period or periods totaling not less than ninety days and who (1) having been lawfully admitted to the United States for permanent residence, or (2) having been lawfully admitted to the United States, and having been physically present within the United States for a single period of at least one year at the time of entering the Armed Forces, may be naturalized on petition filed not later than December 31, 1955, upon compliance with all the requirements of the Immigration and Nationality Act, except that——

“(a) he may be naturalized regardless of age;

“(b) no period of residence or specified period of physical presence within the United States or any State after entering the Armed Forces shall be required: Provided, That there shall be included in the petition the affidavits of at least two credible witnesses, citizens of the United States, stating that each such witness personally knows the petitioner to be a person of good moral character, attached to the principles of the Constitution of the United States

and well disposed to the good order and happiness of the United States;

“(c) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner;

“(d) Notwithstanding section 336(c) of the Immigration and Nationality Act, the petitioner may be naturalized immediately if prior to the filing of the petition, the petitioner and the witnesses shall have appeared before and been examined by a representative of the Immigration and Naturalization Service; and

“(e) no fee, except that which may be required by State law, shall be charged or collected for making, filing, or docketing the petition for naturalization, or for the final hearing thereon, or for the certificate of naturalization, if issued.

“Service in the Armed Forces of the United States may be proved by a duly authenticated copy of the record of the executive or military department having custody of the record of the petitioner's service, showing that the petitioner is or was during the period or periods hereinbefore described a member serving actively and honorably in such forces and, if separated from such service, that he was not separated under other than honorable conditions; or may be proved by affidavits, forming part of the petition, of at least two citizens of the United States, members of the Armed Forces of the United States, of the noncommissioned or warrant officer grade or higher (who may also be the witnesses de-



scribed in subsection (b) of this section): Provided, however, That no period of service in the Armed Forces of the United States shall be made the basis of a petition for naturalization under this Act if the applicant has previously been naturalized on the basis of the same period of service."

It will be noted that the petitioner could not truthfully make all of the allegations contained in the printed form of the petition, and therefore, at the direction of his attorney the following allegation was struck out, "I was physically present in the United States for a single period of at least one year at the time of entering such service". The petitioner does not have the alternative requirement contained in Public Law 86 that he was ever lawfully admitted to the United States for permanent residence. He, therefore, is not entitled to be naturalized under this section.

The present Immigration and Nationality Act also contains Section 328, 8 U.S.C. 1439 which reads as follows:

"Sec. 328. (a) A person who has served honorably at any time in the armed forces of the United States for a period or periods aggregating three years, and who, if separated from such service, was never separated except under honorable conditions, may be naturalized without having resided, continuously immediately preceding the date of filing such person's petition, in the United States for at least five years, and in the State in which the petition for naturalization is filed for at least six months, and without having been physically present in the United

States for any specified period, if such petition is filed while the petitioner is still in the service or within six months after the termination of such service.

“(b) A person filing a petition under subsection (a) of this section shall comply in all other respects with the requirements of this title, except that—

“(1) no residence within the jurisdiction of the court shall be required;

“(2) notwithstanding section 336(c), such petitioner may be naturalized immediately if the petitioner be then actually in the Armed Forces of the United States, and if prior to the filing of the petition, the petitioner and the witnesses shall have appeared before and been examined by a representative of the Service;

“(3) the petitioner shall furnish to the Attorney General, prior to the final hearing upon his petition, a certified statement from the proper executive department for each period of his service upon which he relies for the benefits of this section, clearly showing that such service was honorable and that no discharges from service, including periods of service not relied upon by him for the benefits of this section, were other than honorable. The certificate or certificates herein provided for shall be conclusive evidence of such service and discharge.

“(c) In the case such petitioner's service was not continuous, the petitioner's residence in the United States and State, good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good

order and happiness of the United States, during any period within five years immediately preceding the date of filing such petition between the periods of petitioner's service in the Armed Forces, shall be alleged in the petition filed under the provisions of subsection (a) of this section, and proved at the final hearing thereon. Such allegation and proof shall also be made as to any period between the termination of petitioner's service and the filing of the petition for naturalization.

“(d) The petitioner shall comply with the requirements of section 316(a) of this title, if the termination of such service has been more than six months preceding the date of filing the petition for naturalization, except that such service within five years immediately preceding the date of filing such petition shall be considered as residence and physical presence within the United States.

“(e) Any such period or periods of service under honorable conditions, and good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during such service, shall be proved by duly authenticated copies of the records of the executive departments having custody of the records of such service, and such authenticated copies of records shall be accepted in lieu of compliance with the provisions of section 316(a).”

It will be noted that in the above section 328 the exemptions are listed, and that the petitioner is not



exempted from the requirement that he have lawful arrival for permanent residence. I desire to call the court's attention to the Departmental Regulation which is pertinent with respect to the requirements under this Section. Part 328.1 of 8 Code of Federal Regulations provides: "Such person shall establish that he is in the United States pursuant to lawful arrival for permanent residence occurring prior to the filing of the petition whether or not it occurred before or after the service in the armed forces".

Also in the present Immigration and Nationality Act there is section 329, 8 U.S.C. 1440 reading as follows:

"Sec. 329. (a) Any person who, while an alien or a non-citizen national of the United States, has served honorably in an active-duty status in the military, air, or naval forces of the United States during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, and who, if separated from such service, was separated under honorable conditions, may be naturalized as provided in this section if (1) at the time of enlistment or induction such person shall have been in the United States, the Canal Zone, American Samoa, or Swains Island, whether or not he has been lawfully admitted to the United States for permanent residence, or (2) at any time subsequent to enlistment or induction such person shall have been lawfully admitted to the United States for permanent residence. The executive department under which such person served shall determine whether persons have served honorably in an active-duty

status, and whether separation from such service was under honorable conditions: Provided, however, That no person who is or has been separated from such service on account of alienage, or who was a conscientious objector who performed no military, air, or naval duty whatever, or refused to wear the uniform, shall be regarded as having served honorably or having been separated under honorable conditions for the purposes of this section. No period of service in the Armed Forces shall be made the basis of a petition for naturalization under this section if the applicant has previously been naturalized on the basis of the same period of service.

“(b) A person filing a petition under subsection (a) of this section shall comply in all other respects with the requirements of this title, except that——

“(1) he may be naturalized regardless of age, and notwithstanding the provisions of section 331 of this title;

“(2) no period of residence or specified period of physical presence within the United States or any State shall be required;

“(3) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner;

“(4) service in the military, air, or naval forces of the United States shall be proved by a duly authenticated certification from the executive department under which the petitioner served or is serving, which shall state whether the petitioner served honorably in an active-duty status during either World War I or during a period beginning September 1,

1939, and ending December 31, 1946, and was separated from such service under honorable conditions; and

“(5) notwithstanding section 336(c) of this title, the petitioner may be naturalized immediately if prior to the filing of the petition the petitioner and the witnesses shall have appeared before and been examined by a representative of the Service.

“(c) Citizenship granted pursuant to this section may be revoked in accordance with section 340 of this title if at any time subsequent to naturalization the person is separated from the military, air, or naval forces under other than honorable conditions, and such ground for revocation shall be in addition to any other provided by law. The fact that the naturalized person was separated from the service under other than honorable conditions shall be proved by a duly authenticated certification from the executive department under which the person was serving at the time of separation.

“(d) The eligibility for naturalization of any person who filed a petition for naturalization prior to January 1, 1947, under section 701 of the Nationality Act of 1940, as amended (56 Stat. 182, 58 Stat. 886, 59 Stat. 658; 8 U.S.C. 1001), and which is still pending on the effective date of this Act, shall be determined in accordance with the provisions of this Section.”

It will be observed that the above Section 329 sets up two alternative conditions neither of which this petitioner can meet. The service man must have been

inducted in the United States, the Canal Zone, American Samoa or Swains Island, or if not, he must have lawful arrival for permanent residence.

The above three sections are under existing law, and I will now turn to the sections repealed by the present Immigration and Nationality Act. The saving clause in Section 405 has been held to make applicants eligible when they filed applications before the former laws were repealed on December 24, 1952. This applicant submitted his first application on October 3, 1954, which was long after the repeal of the sections I will now consider. It has also been held that a person fully qualified under any of the former sections retained his right to file a petition under them though he failed to submit an application before the repeal of the law. Therefore, it will be considered whether the petitioner became fully qualified under any of the former sections while they were still in force.

Section 324A of the Nationality Act of 1940, as amended, was in effect until the enactment of the present Immigration and Nationality Act. The portion of the statute with respect qualifying service and arrival reads as follows:

“Sec. 324A. (a) Any person not a citizen who has served honorably in an active-duty status in the military or naval forces of the United States during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or who, if separated from such service, was separated under honorable conditions, may be naturalized as provided in this section if (1) at the time of

enlistment or induction such person shall have been in the United States or an outlying possession (including the Panama Canal Zone, but excluding the Philippine Islands), or (2) at any time subsequent to enlistment or induction such person shall have been lawfully admitted to the United States for permanent residence. The executive department under which such person served shall determine whether persons have served honorably in an active-duty status, and whether separation from such service was under honorable conditions: Provided, however, That no person who is or has been separated from such service on account of alienage, or who was a conscientious objector who performed no military or naval duty whatever or refused to wear the uniform, shall be regarded as having served honorably or having been separated under honorable conditions for the purposes of this section."

The present petitioner does not qualify by reason of enlistment or induction in the Philippine Islands, and he does not have the alternative lawful arrival for permanent residence. Even were such section fully effective at the present time this petitioner could not qualify under it.

Section 324(a) of the Nationality Act of 1940, the former 8 U.S.C. 724(a) reads as follows with respect to the qualifying service:

"Sec. 324. (a) A person who has served honorably at any time in the United States Army, Navy, Marine Corps, or Coast Guard for a period or periods aggregating three years and who, if separated from



such service, was separated under honorable conditions, may be naturalized without having resided, continuously immediately preceding the date of filing such person's petition, in the United States for at least five years and in the State in which the petition for naturalization is filed for at least six months, if such petition is filed while the petitioner is still in the service or within six months after the termination of such service. (54 Stat. 1149; 8 U.S.C. 724.)"

The petitioner never did have three years service during the time the above-quoted statute was in effect, and therefore, he never did qualify under that section while it still was a law.

From an examination of every pertinent statute I conclude that this petitioner was never qualified under any repealed section of the law, and that he is not now qualified under any existing statute.

4. Pursuant to the provisions of section 335 of the Immigration and Nationality Act, I hereby make the following findings of fact and conclusions of law:

#### Findings of Fact

(a) That the petitioner is an alien and filed a petition for naturalization on September 2, 1955;

(b) That the petitioner has never been admitted to the United States for permanent residence;

(c) That the petitioner served in the United States Army from March 5, 1946 to February 11, 1949, and

that the enlistment, and all of such service was in the Philippine Islands;

(d) That petitioner enlisted in the United States Navy in the Philippine Islands on March 8, 1954, and has served in the United States Navy since that date; and

(e) That the petitioner submitted his first naturalization application on October 3, 1954.

### Conclusions of Law

(a) That the petitioner is not entitled to be naturalized under Public Law 86, 83rd Congress, 8 U.S.C. 1440a, for the reason that he has never been lawfully admitted to the United States for permanent residence, and for the reason that following a lawful admission to the United States he was not physically present within the United States for a single period of at least one year at the time of entering the Armed Forces;

(b) That the petitioner is not entitled to be naturalized under Section 328 of the Immigration and Nationality Act, 8 U.S.C. 1439, for the reason that he has never been lawfully admitted to the United States for permanent residence;

(c) That the petitioner is not entitled to be naturalized under Section 329 of the Immigration and Nationality Act, 8 U.S.C. 1440, for the reason the petitioner was not inducted or enlisted in the Armed Forces in the United States, the Canal Zone, American Samoa or Swains Island, and has never been

admitted to the United States for permanent residence;

(d) During the period section 324A of the Nationality Act of 1940 as amended was in effect the petitioner never became qualified under it for the reason that his enlistment in the Armed Forces was in the Philippine Islands, and he has never been admitted to the United States for permanent residence;

(e) During the period section 324(a) of the Nationality Act of 1940, then 8 U.S.C. 724(a), was in effect, this petitioner never became qualified under it for the reason that he did not have three years service in the Armed Forces of the United States until after that statute had been repealed; and

(f) That there is no other existing or repealed statute under which this petitioner is entitled to be naturalized.

5. I recommend that this petition for naturalization be denied on the ground that the petitioner is not entitled to be naturalized under Public Law 86, or the Immigration and Nationality Act, including any statute covered by the Savings Clause of that Act.

Respectfully submitted,

/s/ STEPHEN A. DURISCH,

Designated Naturalization Examiner

[Endorsed]: Filed Dec. 22, 1955.



[Title of District Court and Cause.]

NOTICE OF APPEAL TO UNITED STATES  
COURT OF APPEALS FOR THE NINTH  
CIRCUIT UNDER RULE 73(b)

Notice is hereby given that Ricaredo Bernabe Dela Cena, Petitioner above named, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on December 22, 1955.

Dated at Honolulu, T. H., this 21st day of January, 1956.

/s/ HOWARD K. HODDICK,  
Attorney for Petitioner.

[Endorsed]: Filed Jan. 21, 1956.

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[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING  
RECORD ON APPEAL AND DESIGNAT-  
ING APPEAL

On application of the petitioner above named made pursuant to the provisions of Rule 73g of the Federal Rules of Civil Procedure,

It Is Hereby Ordered that the petitioner may have up to and including the 19th day of April, 1956, within which to file the record on appeal and to docket the appeal.

Dated: Honolulu, T. H., this 29th day of February, 1956.

/s/ J. FRANK McLAUGHLIN,  
Judge of the Above Entitled Court.

[Endorsed]: Filed Feb. 29, 1956.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

United States of America,  
District of Hawaii—ss.

I, William F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled matter, numbered from Page 1 to Page 31 consists of a statement of the names and addresses of the attorneys of record and of the various pleadings and transcript of proceedings as hereinbelow listed and indicated:

#### Originals:

Findings of Fact, Conclusions of Law, and Recommendation of Designated Naturalization Examiner

Notice of Appeal to United States Court of Appeals for the Ninth Circuit Under Rule 73(b)

Order Extending Time for Filing Record on Appeal and Designating Appeal

Designation of Record on Appeal

Transcript of Proceedings

Copies:

Petition for Naturalization

List No. 1199, Naturalization Petitions Recommended to Be Denied

Order No. 1199, Order of Court Denying Petitions for Naturalization

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 16th day of April, 1956.

[Seal]            /s/ WM. F. THOMPSON, JR.,  
Clerk, U. S. District Court,  
District of Hawaii.

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In the United States District Court  
for the District of Hawaii

Petition No. 665-p-17365-M

Petition for naturalization

of

RICAREDO BERNABE DELA CENA

### TRANSCRIPT OF PROCEEDINGS

In the above-entitled matter held on December 22, 1955, at 10:00 a.m.,

Before: Hon. J. Frank McLaughlin, Judge.

Appearances: Howard K. Hoddick, Esq., appearing for the Petitioner. Stephen A. Durisch, Naturalization Examiner.

## Proceedings

The Clerk: Petition No. 17365, Ricaredo Bernabe Dela Cena. Will you step forward, please. The petition is called for further hearing. Will you raise your right hand and be sworn.

(Petitioner sworn)

The Court: Mr. Hoddick, you represent this man?

Mr. Hoddick: I represent him, yes, your Honor.

The Court: Very well.

Mr. Durisch: I would like to have the record show that I am filing a document required by regulations in quite a number of court decisions entitled Findings of Fact and Conclusions of Law and Recommendations of the Designated Examiner. (Handling a document to the clerk)

The Court: Very well.

Mr. Durisch: The very first thing I was interested in, with the possible saving of time of the Court, is whether or not he had an issue of law, whether or not there is an issue of law or one of fact. Mr. Hoddick says that my findings of fact contained on page 8——

The Court: Has he a copy of them?

Mr. Durisch: Yes.

Mr. Hoddick: Yes, your Honor.

Mr. Durisch: ——are correct with the exception that the petitioner's service during the period from March 5, 1949, to February 11, 1949, was at least partly or all in Japan rather than in the Philippine Islands, which does not change the situation. So,

therefore, the facts are agreed upon. I believe we have a question of law before the Court.

The Court: And what, in your view, is that question?

Mr. Durisch: Your Honor, I have endeavored to meet the wishes of the applicant, that his case be considered from the standpoint of whether or not he is entitled to be naturalized under any statute relating to the naturalization of persons who have served in the armed forces. So the plan of my report was to list and quote from a number of different statutes. That possibly can be narrowed down if the petitioner's attorney wants to indicate to the Court that he does not claim that certain of these statutes would apply. But if he wants to specify a particular statute that he thinks his client might be naturalized under, I believe it would conserve the time of the Court.

The Court: All right.

Mr. Durisch: The statutes that I have considered are listed on page 9 under Conclusions of Law.

The Court: Yes.

Mr. Durisch: If there are other statutes that I have omitted, that is possible, but my intention was to list every possible statute that might apply in the situation. Now, I think it would conserve the time of the Court if there is some election made as to what statutes he thinks his client is entitled to.

The Court: All right, Mr. Hoddick. You, having the benefit of this report and having had no doubt an opportunity to read it, reflected on it, and will you please give the Court the benefit of knowing

your position with regard to it? Am I correctly advised that you had time to study it?

Mr. Hoddick: Your Honor, I have. This was mailed to me quite some time ago. There are two points in which we differ with the Immigration Examiner with reference to the Findings of Fact. The first, as he noted, that the petitioner enlisted in the United States Army in the Philippines and more recently enlisted in the United States Navy in the United States, at the U. S. Naval Base in Cavite in the Philippines, in 1954, and from thence came to the United States. That while he was in the Army, which was for a period just shy of three years, he served almost the entire time in Okinawa.

I would take issue with the Examiner's finding that the petitioner has never been admitted to the United States for permanent residence. This is the first experience I have had with a procedure of this sort, whether that is a fact which could be established through the testimony of the petitioner or not. Our position is that the petitioner was brought in here under military orders by the U. S. Navy, that consequently, under the decided cases, his entry was a lawful entry.

The Court: Well, that is not a point under the conclusions of law. Judge Wiig had a case involving something about the military bringing in a person without going through immigration.

Mr. Hoddick: That was the case of Echiverri. The Immigration Service took an appeal which was later discontinued.

The Court: But being lawfully admitted and law-



fully admitted for permanent residence may be two different things.

Mr. Hoddick: I recognize that. And that is where we get into, I would submit, perhaps the subjective intent of the petitioner at the time he made his entry.

The Court: I don't think that that factor has any relevancy. This phrase "Admitted for permanent residence" has meaning to me that he went through immigration and was recognized as being a lawfully entering individual, alien, who was given permission by our government through the Immigration Service to not only come into the United States lawfully but to be and remain there for permanent residence. But the mere fact that he, via the military, got in without going through immigration and had subjective intent that he was going to stay forever may be a fact but I don't think it is a fact that has relationship to this conclusion of law, which I think is a technicality under the Immigration and Naturalization Act. At least, that is my reaction to it at the moment. If I am wrong, I will be happy to hear from you. But I think if your view is right, you would like to put on some evidence as to his subjective intent at the time.

Mr. Hoddick: That is correct.

The Court: All right. Is there anything else?

Mr. Hoddick: That's all at the moment. I think that hurdle has to be gotten over first before I can proceed.

The Court: All right.

(Argument of Counsel)

The Court: I will decline to hear evidence as to his subjective intent at the time of his arrival as being irrelevant.

Mr. Hoddick: I had gathered that the Naturalization Examiner had in effect offered to stipulate that he had such subjective intent.

The Court: Yes.

Mr. Durisch: I will concede it or stipulate it.

The Court: I will reject the stipulation as irrelevant, then.

(Further argument of Counsel)

The Court: So you will know just where you stand in case you want to appeal, I rule against your contention and hold that he is not eligible and that the conclusions of law listed are sound.

(Further argument on claim of eligibility under Section 324-a of the Nationality Act of 1940.)

The Court: On the giveaway theory you certainly have a good argument to make. I am going to rule against you, but I will probably be reversed. My view is that under this particular law, the period of time amounting to three years does not necessarily have to be continuous, but they all have to have accrued within the lifetime of the statute. It is regrettable that he falls short of the three years by such a brief period of time. But there has to be some line of demarcation and some rules to go by. And the rule, as I interpret it, is that it means three full years, an aggregating period of three full years **during** the lifetime of the statute under which he claims.

And that is not the fact here, for he didn't reenlist until '54; the statute was repealed in '52.

I am going to have to deny him eligibility to be naturalized under this section. I fully expect to be reversed. So if you want to appeal this point, you certainly will have my cooperation in helping him expedite the appeal, because it is somewhat of a novel proposition.

Mr. Hoddick: Your Honor, for the record may we note the customary exception?

The Court: Surely.

Mr. Hoddick: As being contrary to law and the evidence.

The Court: Surely.

Mr. Hoddick: And having in mind what the Court just said, maybe some simpler form be directed to the Ninth Circuit—

The Court: Yes, I think you can go up on a stipulation of facts, a short abbreviated record, questions of law submitted on briefs. I predict you will get me reversed. But I just can't accept the cracker-jack theory of citizenship.

Mr. Durisch: It is my understanding that this report is in the record?

The Court: Yes, it is. It has been filed. All right.

[Endorsed]: Filed Apr. 16, 1956.

[Endorsed]: No. 15106. United States Court of Appeals for the Ninth Circuit. Ricaredo Bernabe Dela Cena, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Hawaii.

Filed: April 17, 1956.

Docketed: April 23, 1956.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 15106

Petition for naturalization

of

RICAREDO BERNABE DELA CENA,  
Appellant.

STATEMENT OF POINTS TO BE  
RELIED UPON ON APPEAL

Comes now Ricaredo Bernabe Dela Cena, appellant in the above entitled cause, by his attorney, Howard K. Hoddick, and pursuant to the provisions of Rule 19 (6) of the Rules of Practice for the United States Court of Appeals for the Ninth Circuit, hereby states that the appellant in taking this appeal relies upon the following:

(1) The order of the United States District Court for the District of Hawaii dated December 22, 1955, from which this appeal is taken and which denied the petition of the appellant was erroneous in the following particulars:

(a) That appellant was not qualified to be naturalized under Public Law 86, 83rd Congress, 8 U.S.C. 1440a;

(b) That appellant was not qualified to be naturalized under Section 328 of the Immigration and Nationality Act, 8 U.S.C. 1439;

(c) That appellant was not qualified to be naturalized under Section 329 of the Immigration and Nationality Act, 8 U.S.C. 1439;

(d) That appellant was not qualified to be naturalized under Section 324A of the Nationality Act of 1940, Act of June 1, 1948, 62 Stat. 281;

(e) That appellant was not qualified to be naturalized under Section 324(a) of the Nationality Act of 1940, then 8 U.S.C. 724(a).

By reason of said error, the order denying the petition of the appellant should be reversed.

Dated: Honolulu, T. H., April 16, 1956.

RICAREDO BERNABE DELA CENA,  
Appellant,

/s/ HOWARD K. HODDICK,  
His Attorney

/s/ By ROBERT W. B. CHANG

[Endorsed]: Filed April 17, 1956. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF RECORD ON APPEAL  
TO BE PRINTED

Appellant Ricaredo Bernabe Dela Cena, designates the following portion of the record to be printed on appeal in the above entitled cause:

- (1) Petition for Naturalization;
- (2) Findings and Recommendations of Naturalization Examiners;
- (3) List of petitions recommended to be denied;
- (4) Order denying petitions (Dec. 22, 1955);
- (5) Notice of appeal;
- (6) Order extending time;
- (7) Transcript;
- (8) The Designation of record on appeal;
- (9) This Designation of record on appeal to be printed;
- (10) Statement of points to be relied upon on appeal.

Dated: Honolulu, T. H., April 16, 1956.

RICAREDO BERNABE DELA CENA,  
Appellant,

/s/ HOWARD K. HODDICK,  
Attorney for Appellant

/s/ By ROBERT W. B. CHANG

[Endorsed]: Filed April 17, 1956. Paul P. O'Brien, Clerk.